IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1955.

No. 953.

WILLIAM M. LIDDON,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE.

MARIA PROTHRO LIDDON,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

REPLY OR SUPPLEMENTAL BRIEF ON BEHALF OF PETITIONERS.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners, William M. Liddon and Maria Prothro Liddon, have heretofore filed their petition for a writ of certiorari in the captioned consolidated cases, to which the respondent has filed its brief in opposition. Because of

certain matters appearing from the brief in opposition, petitioners submit this reply or supplemental brief pursuant to Rule 24 (4) of this Honorable Court.

I.

In the brief for the respondent in opposition the statement is made at page 9 thereof:

> "Under Section 112 (b) (3) no gain was recognizable on the exchange of stock in the old corporation for stock in the new. But in addition to the new stock each taxpayer received $75,618.64 in money and other property ('boot'), resulting in a reported gain of $68,818.64 each (R. 233a). Since the gain did not exceed the 'boot,' the entire gain was recognizable by virtue of the provisions of Section 112 (c) (1)."

This statement, petitioners respectfully submit, illustrates the basic fallacy in respondent's entire argument and in the conclusion reached by the Court of Appeals for the Sixth Circuit; this for the reason that in the case at bar there was no exchange of stock in the old corporation for stock in the new nor receipt of money by the taxpayers in exchange for stock in the new corporation; but, on the contrary, the record shows without dispute that the stock in the old corporation was surrendered in exchange for the assets of the old corporation and that the stock in the new corporation was purchased by taxpayers for cash, no part of which came from the liquidation of the old corporation. The only assets of the old corporation which became a part of the assets of the new were some parts and tools which were sold to the new corporation for a cash consideration.

II.

The importance of a decision by this Honorable Court in the present case is best stated in the language of the respondent in its petition for certiorari to this Honorable

Court in the case of **United States of America v. The Arcade Company** (October Term, 1953), where on page 12 of its petition the respondent asserted:

> "Its decision (the decision of the Court of Appeals for the Sixth Circuit in The Arcade Company case) is in direct conflict with that of the Court of Appeals for the Eighth Circuit in **Survaunt v. Commissioner,** 162 F. 2d 753, and is opposed, in principle, to the rulings of this Court. The problems raised by the decision are important in the proper application of the 'reorganization' sections of the statute, since they are recurrent and of vital concern to corporations and stockholders, as well as to the Government."

As was true then, so it is true now, that there is a conflict among the Circuits as exemplified by the decision in the case at bar, the **Arcade** case, supra, the **Survaunt** case, supra, and the case of **Henrickson v. Braicks,** 137 F. 2d 632 (C. A. 9th), which conflict causes great doubt as to the proper application of the pertinent sections of the statute.

Petitioners therefore sincerely, earnestly and respectfully submit that this petition should be granted in order that this conflict might be resolved and corporations, stockholders and the Government advised as to the proper application of the statute.

Respectfully submitted,

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